

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**DENNY L. CLEMENS,**

**Defendant.**

**CASE NO. 8:09CR232**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on the Report and Recommendation (Filing No. 23) issued by Magistrate Judge Thomas D. Thalken recommending denial of the Defendant's motion to suppress (Filing No. 17). No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

The Defendant, Denny L. Clemens, seeks an order suppressing evidence seized and statements made as the result of his encounter with law enforcement on June 3, 2009. Briefly, officers had information about drug activity taking place at an address on Maple Street, Omaha, Nebraska. Officers went to the address, described as a garage, encountered Clemens and asked him what was in his pockets. No items were seized from Clemens. A drug dog was summoned and alerted to the garage door and a Ford pickup truck. Officers searched the truck and found nothing. An officer obtained a search warrant for the garage. The garage was searched and methamphetamine, a gun, and items showing Clemens's name were found.

After a hearing, Judge Thalken issued oral findings of fact and conclusions of law and filed a brief written Report and Recommendation. Judge Thalken concluded that Clemens did not satisfy his burden of proving that he had standing with respect to the Maple Street premises. Moreover, Judge Thalken concluded that, assuming Clemens had

standing: the positive canine alert at the garage door provided probable cause for the search of the premises; Clemens's detention pending the arrival of the search warrant was supported by sufficient probable cause; and Clemens's disclosure of items in his pockets did not violate the Fourth Amendment. Judge Thalken recommended that the motion to suppress be denied.

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of the record. The Court has also viewed the evidence. (Filing No. 20.) Because Judge fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety.

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 23) is adopted in its entirety; and
2. The Defendant's motion to suppress (Filing No. 17) is denied.

DATED this 16<sup>th</sup> day of September, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge